

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL CURTIS LOBATO,

Plaintiff,

v.

No. CIV 14-0753 WJ/GBW

JOHONA GONZALES,

Defendants.

**MEMORANDUM OPINION AND ORDER**

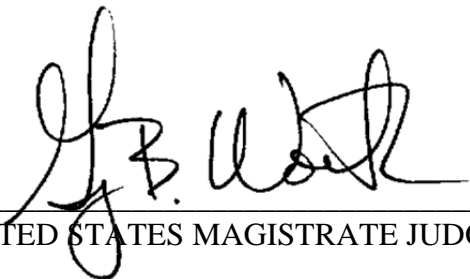
This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(a), (d) and rule 4 of the Federal Rules of Civil Procedure, on Plaintiff's civil rights complaint. According to the docket, Plaintiff was a pretrial detainee when he filed his original pleading, and he has now been released. Plaintiff appears pro se and is proceeding pursuant to 28 U.S.C. § 1915. Because Plaintiff was released before the Court ordered an initial partial payment, the payment will be waived. *See Christensen v. Big Horn County Bd. of County Comm'rs*, 374 F. App'x 821, 830 n. 7 (10th Cir. 2010). It appears to the Court that notice and waiver of service forms should be issued for Defendant Gonzales.

Also before the Court are Plaintiff's Motion for Relief (Doc. 9) and Joinder Request for Relief (Doc. 11). The Motion for Relief asks the Court to award him the amount sought in the complaint. The Court construes the motion as seeking a default judgment and will deny the motion. Defendant has not been served, and "an entry of default against [a defendant], before it had any obligation to file an answer, would have been incorrect as a matter of law." *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003). In the joinder motion, Plaintiff asks the Court

for relief as to the measure of damages in each of his cases and offers to settle his claims for \$75,000. The Court will apply the appropriate measure damages if Plaintiff establishes Defendant's liability, and the motion will be denied at this time as premature.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Relief (Doc. 9) and Joinder Request for Relief (Doc. 11) are DENIED at this time;

IT IS FURTHER ORDERED that the Clerk is directed to issue notice and waiver of service forms, with copies of the complaint and this Order, for Defendant Gonzales.



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UNITED STATES MAGISTRATE JUDGE